

**Before the
Federal Communications Commission
Washington D.C. 20554**

In the Matter of)	
)	
Petition for Declaratory Ruling That)	
UniPoint Enhanced Services, Inc. d/b/a)	WC Docket No. 05-276
PointOne and Other Wholesale Transmission)	
Providers Are Liable for Access Charges))	
)	

COMMENTS OF ALLTEL

Alltel Corporation (“Alltel”), on behalf of its local exchange carrier affiliates, hereby submits its comments in response to the Public Notice¹ through which the Commission sought comment on the Petitions for Declaratory Ruling filed by SBC² and VarTec³ with regards to the application of access charges for interexchange traffic transported using IP technology.

I. Introduction

¹ *Pleading Cycle Established for SBC’s and VarTec’s Petitions for Declaratory Ruling Regarding the Application of Access Charges to IP-Transported Calls*, WC Docket No. 05-276, DA 05-2514 (released September 26, 2005).

² *Petition of the SBC ILECs for a Declaratory Ruling That UniPoint Enhanced Services, Inc. and Other Wholesale Transmission Providers Are Liable for Access Charges* (filed September 21, 2005) (“SBC Petition”).

³ *Petition for Declaratory Ruling that VarTec Telecom, Inc. Is Not Required to Pay Access Charges to Southwestern Bell Telephone Company or Other Terminating Local Exchange Carriers When Enhanced Service Providers or Other Carriers Deliver the Calls to Southwestern Bell or Other Local Exchange Carriers for Termination* (filed August 20, 2004) (“VarTec Petition”).

Alltel agrees with SBC's Petition that providers of wholesale transport services of interexchange traffic originating and terminating on the Public Switched Telephone Network ("PSTN") should be liable for access charges regardless of the technology used to deliver such services. Prior Commission precedent supports SBC's Petition, including the Commission's order resulting from AT&T's Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP services are exempt from access charges.⁴ Nonetheless, the Commission again should clarify the existing law governing intercarrier compensation with respect to "IP in the middle" traffic because many "self-proclaimed" Enhanced Service Providers ("ESPs") are ignoring it.

Alltel will demonstrate that the services provided by UniPoint, PointOne and other similarly situated carriers ("IP Transport Providers") are telecommunications services in accordance with Commission precedent. Furthermore, Alltel will show that IP transport services provided by UniPoint, PointOne and other "self proclaimed" ESPs are identical to the services provided by interexchange carriers ("IXCs"). Therefore, the assertion made by IP Transport Providers that the services provided by them are not subject to access charges because they are not IXCs is incorrect, and is nothing more than mere name reclassification in an attempt to manipulate the existing intercarrier

⁴ *In the Matter of Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, Order, WC Docket No. 02-361, 19 FCC Rcd. 7457 (released April 21, 2004) ("AT&T Order").

compensation system and to avoid lawful access compensation obligations. The Commission should dismiss all such assertions and affirm the applicability of access charges to all carriers (especially ESPs) terminating interexchange traffic to the PSTN.

ESPs providing IP transport service assert that they are not obligated to compensate local exchange carriers for access charges because they, as providers of “enhanced services” rather than “telecommunications services”, are entitled to the ESP Exemption.⁵ Alltel will demonstrate that the scope of the ESP Exemption is narrow and is not intended to exempt interexchange wholesale providers using IP technology from the application of access charges. Such interexchange traffic does not undergo a net protocol conversion and, therefore, does not qualify for the ESP Exemption as determined previously by the Commission. As a result, IP Transport Providers are lawfully obligated to compensate local exchange carriers at access rates for interexchange traffic terminating on the ILEC networks just as all other carriers who terminate interexchange traffic on the ILEC networks are.

Finally, Alltel will demonstrate that local exchange carriers are not required to pay reciprocal compensation charges to IXC for intraMTA traffic originated by Commercial Mobile Radio Service (“CMRS”) providers, transported by an IXC and terminated on the LEC networks as requested by VarTec.

⁵ The exemption from access charges granted by the Commission to enhanced service providers (“ESPs”) in CC Docket No. 78-72.

II. Background

Alltel devotes significant resources to resolve intercarrier compensation disputes associated with the termination of interexchange traffic using an IP network component that originate and terminate on the PSTN. For example, in September 2003, AT&T Corp. filed a lawsuit in the U.S. District Court of the Eastern District of Virginia against MCI, Inc., a/k/a WorldCom, Inc. ("MCI") in Civil Action No. 03-1114-A alleging that MCI routed traffic in a manner that unlawfully disguised the jurisdiction of interexchange traffic in an effort to avoid the lawful assessment of access charges that MCI would otherwise have to pay to the terminating LECs. Alltel conducted various tests of interexchange traffic originating and terminating on its local exchange networks to determine whether similar schemes were occurring with respect to its network. Based on the results of these tests, Alltel determined that indeed some interexchange traffic terminating to Alltel was being routed through an ESP providing IP transport services and subsequently through a competitive local exchange carrier ("CLEC") prior to termination on its local exchange network. In fact, in a joint traffic study, one Alltel ILEC and a terminating CLEC concluded that more than 70% of the traffic delivered by the CLEC had been routed through an IP Transport Provider. The apparent objective of this routing scheme was to deprive Alltel of lawful access compensation.

Upon discovery of these routing schemes, Alltel demanded that the participating carriers change the routing in a manner that allowed Alltel to appropriately assess lawful access compensation. Although one carrier did change the routing of its interexchange traffic by establishing dedicated IXC trunks, the IP Transport Provider involved in the routing scheme refused to accept financial responsibility, similar to the situation described by SBC in its Petition.

Additional testing by Alltel of PSTN-to-PSTN interexchange traffic revealed that other IXCs were terminating traffic to Alltel through a series of intermediaries for the purpose of avoiding lawful access compensation obligations. For example, certain interexchange traffic originating from an Alltel ILEC in Arkansas was routed by an IXC first to an ESP providing IP transport service, second to a CLEC in Texas, third to a local RBOC tandem, and fourth to the local Alltel tandem switch over facilities not designed to carry interLATA traffic, before finally terminating to Alltel's end office. The result of this creative and inefficient routing was to circumvent the Commission's rules and avoid lawful access compensation due to the Alltel ILECs. Currently a number of IXCs and CLECs participating in similar routing schemes are disputing lawful access charges rendered by Alltel for terminating access services. However, these disputes are without merit, are a clear disregard of the Commission's rules and orders and consume significant resources to resolve.

III. Self Proclaimed “Enhanced Service Providers” performing services using identical network functions as interexchange carriers are liable for access compensation

Several carriers, UniPoint and PointOne among others, assert that they are not liable for access compensation because they are not IXC. This view is simply unfounded. These IP Transport Providers perform the same network functions as IXCs. Therefore, it is critical that the Commission carefully analyze the type of service provided by these “self-proclaimed” ESPs before it determines whether access compensation is appropriate.⁶ IP Transport Providers assert that they are not IXCs because they are using IP technology in the provision of their transport service. Yet, the service UniPoint and similarly situated carriers provide is in fact transport service for interexchange traffic that originates and terminates on the PSTN without a net protocol conversion. As a result, the Commission must conclude that any provider of interexchange transport services, whether an ESP or not, is in fact providing the same “telecommunications service” as an IXC and, therefore, liable for access compensation to local exchange carriers. Furthermore, the Commission must affirm that carriers cannot circumvent access compensation obligations by unilaterally reclassifying themselves as “enhanced” or “information” service providers, when in fact they provide services identical to those of IXCs.

⁶ SBC Petition at 18.

The service provided by IP Transport Providers is interexchange service and is identical to the service AT&T sought to exempt from access compensation in its prior request for declaratory ruling from the Commission.⁷ In that proceeding, the Commission correctly concluded that AT&T's service was subject to access charges.⁸ In describing AT&T's service, the Commission observed that customers: (1) place and receive calls using standard telephone equipment; (2) dial 1 plus just as they would on any interexchange call; (3) the call is routed over IXC trunks and handed to AT&T; (4) AT&T converted the call to an IP format expressly for the purpose of transporting the call over its Internet backbone; (5) AT&T converted the call back to TDM format; and (6) the call was terminated to an ILEC either through PRI-business lines or through an intermediary, such as a CLEC.⁹ The Commission appropriately concluded that AT&T's service is a telecommunications service subject to the Commission's access charge rules. Further, the Commission explained that, to the extent AT&T internally decided to use IP technology, AT&T's conversions appeared to be "internetworking" conversions which the Commission considered to be telecommunications services.¹⁰ Engaging in its customary end-to-end analysis, the Commission

⁷ *Petition for Declaratory Ruling that AT&T's Phone-to-Phone IP Services are Exempt from Access Charges* (filed October 18, 2002) ("AT&T Petition").

⁸ AT&T Order at ¶15.

⁹ Id. at ¶11.

¹⁰ Id. at ¶12.

justifiably concluded that since customers subscribing to AT&T's service did not have the capability to alter, retrieve or store information, its service was not an information service under the Telecommunications Act of 1996 but in fact a "telecommunications service" subject to access compensation.¹¹

In the present case described by SBC, the originating party also dials 1 plus using standard telephone equipment, after which the call is routed through IXC trunks to VarTec or another presubscribed IXC. Then, much like the AT&T scenario, VarTec routes the call to another carrier, such as PointOne, who uses an IP network to transport the call. Prior to termination, the call is converted back to TDM format and routed through a CLEC intermediary who terminates the call to the local exchange carrier over a local, typically non-measured, interconnection facility.¹² Clearly, this service is identical to the one provided by AT&T in its petition, except that multiple carriers, rather than one, are engaging in the transport routing scheme. The Commission, however, has already concluded that this type of service is a "telecommunications service" subject to access compensation even when multiple carriers are involved in providing the transport.¹³ Undeniably, the service provided by VarTec in conjunction with its IP-Transport Provider of choice is identical to the service provided by AT&T.

¹¹ Id.

¹² See Memorandum and Order, *Southwestern Bell Tel., L.P. v. VarTec Telecom, Inc.*, No. 4:04-CV-1303 (CEJ) (E.D.Mo. Aug. 23, 2005) at 5.

¹³ AT&T Order at ¶19.

Just like with AT&T, end user customers in the VarTec scheme are not capable of storing, retrieving or altering information. The customers using traditional telephone equipment, simply make and receive calls in exactly the same way as they would through an IXC using circuit switched technology. Therefore, the Commission's conclusion that ESPs providing IP transport service are similarly situated to IXCs offering a telecommunications service subject to access compensation is just as applicable in the instant case as it was in the AT&T Order.

IV. UniPoint, PointOne and other IP wholesale providers shielding themselves behind the ESP Exemption is misplaced and should not be permitted

ESPs' providing IP transport service further assert that access compensation should not apply to traffic they terminate to the PSTN because of the ESP Exemption. Their reliance, however, on the ESP Exemption is misplaced and without merit. The ESP Exemption established in 1983 has a narrow application and was intended to be temporary in nature.¹⁴ Prior to the establishment of the access charge regime, ESPs using "exchange service for jurisdictionally interstate communications" purchased services from the LEC's local tariffs and were treated as end users. The Commission recognized that imposing per minute access charges would significantly increase ESPs costs and

¹⁴ *In the Matter of Amendments to Part 69 of the Commission's Rules Relating to Enhanced Service Providers*, CC Docket No. 87-215, Order, 3 FCC Rcd. 2631 (released April 27, 1988).

could affect their viability.¹⁵ As a result, the Commission permitted these carriers to continue purchasing flat rated services as end users rather than imposing usage based compensation obligations.

At the time the ESP exemption was adopted, the services the Commission sought to protect were the emerging data and computer processing-like services such as teletext, viewdata, access to message and bulletin boards and access to corporate mainframes. While the Commission refused to define “enhanced services” in terms of computer processing and data processing-like terminology¹⁶, it is clear that to be classified as an enhanced service and exempt from usage based compensation obligations, a net protocol conversion must occur.

In 1997, the FCC extended the ESP Exemption asserting that it was not clear whether ESPs “used the public switched network in a manner analogous to IXCs.”¹⁷ However, the IP Transport Providers in the instant case clearly are using the network in the same manner as any IXC would. Their service requires regular telephone equipment to place calls that originate and terminate on the PSTN, there is no net protocol conversion and they do not provide any enhanced

¹⁵ *In the Matter of MTS and WATS Market Structure*, CC Docket No. 78-72, Memorandum Opinion and Order, 97 F.C.C.2d 682 (released August 22, 1983) at ¶83 (“MTS/WATS Order”).

¹⁶ *In the Matter of Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry)*, Docket No. 20828, Final Decision, 77 F.C.C. 2d 384 (released May 2, 1980) at ¶113.

¹⁷ *In the Matter of Access Charge Reform; Price-Cap Performance Review for Local Exchange Carriers; Transport Rate Structure and Pricing End User Common Line Charges*, CC Docket Nos. 96-262; 94-1; 91-213; 95-72, First Report and Order, 12 FCC Rcd. 15982 (released May 16, 1997) at ¶345; SBC Petition at 28.

functionality to the customer. Therefore, no matter how these entities classify themselves (ESPs, IXC's, information service providers, etc.), they provide wholesale transport service exactly identical to IXC's for which the access compensation regime was established and their service should not be entitled to the ESP Exemption. Accordingly, they are liable for access compensation in conjunction with the provision of these services.

The scope of the ESP Exemption is narrow and clearly the transport service described in the proceeding is not within it. The Commission adopted the ESP Exemption to ensure that emerging data services using the PSTN continued to flourish and expand. The ESP Exemption was never intended to provide a competitive advantage to certain carriers providing identical transport service to those of IXC's. As SBC explained in its Petition, the Commission has concluded that in cases where ESPs providing transport use the facilities of the ILEC as an internetworking component in an end-to-end interexchange call, the ESP Exemption does not apply.¹⁸ Furthermore, the Commission has stated that converting voice traffic to IP for transport purposes provides no enhanced benefit to consumers and is not a service deserving exceptional treatment.¹⁹ ESPs provide transport services using an IP network for routing some portion of an interexchange call, which does not otherwise qualify for the ESP Exemption,

¹⁸ SBC Petition at 7.

¹⁹ AT&T Order at ¶17.

therefore IP transport services provided by ESPs are subject to access compensation obligations to local exchange companies.

V. IXCs are not entitled to Reciprocal Compensation Charges for the Transport and Termination of IntraMTA Calls Originated by a CMRS Provider

In its claim, VarTec (an IXC) erroneously relies on the facts stated in the Texcom Order²⁰ in an attempt to characterize the transport service it provides to originating CMRS providers as “transit” service and seeks to collect local reciprocal compensation as if it were a LEC. VarTec stated that the facts presented in its Petition “are similar to those in the Texcom decisions.”²¹ However, because VarTec does not allow any requesting carrier to interconnect with its switch in order to exchange traffic, VarTec is not providing the same network functionality as an ILEC tandem and as a result is not a transit service provider entitled to compensation by the ILEC terminating the call. Therefore, the Texcom decision is not dispositive of the VarTec petition.

The key issue presented to the Commission in Texcom was whether GTE North violated the Commission’s rules by charging a paging company for terminating traffic that transited GTE North’s network.²² Consistent with its

²⁰ *Texcom, Inc., d/b/a Answer Indiana v. Bell Atlantic Corp. d/b/a Verizon*, File No. EB-00-MD-14, Memorandum Opinion and Order, 16 FCC Rcd. 21493 (released November 28, 2001) (“Texcom”).

²¹ VarTec Petition at 12.

²² Texcom at ¶1.

previous findings in the TSR Wireless Order²³, the Commission again concluded that “an interconnecting LEC may charge the CMRS carrier for traffic that transits across the interconnecting LEC’s network and terminates on the CMRS provider’s network, if the traffic did not originate on the LEC’s network.”²⁴

VarTec’s reliance on the Texcom Order is misplaced because the Commission’s decision was based on its reciprocal compensation rules. VarTec is not a local service provider and therefore cannot avail itself of reciprocal compensation rules that are not applicable to IXCs.

Although the Commission repeatedly stated that a *LEC* may charge the terminating CMRS provider for transport of transit traffic, at no point in the Texcom or TSR Wireless Orders did the Commission extend its analysis to IXCs such as VarTec. **In fact, the Commission stated that “such [IntraMTA] traffic falls under [its] reciprocal compensation rules if carried by the incumbent LEC and under [its] access charge rules if carried by an interexchange carrier.”**²⁵ As mentioned above VarTec, as an IXC, may not avail itself of the **intercarrier** compensation rules established for local exchange carriers and as an IXC, the **intercarrier** relationship between VarTec and the terminating LEC continues to be governed by the access charge regime. Therefore, VarTec is not allowed under

²³ *In the Matters of TSR Wireless, LLC v. U.S. West Communications, Inc.*, File Nos. E-98-13; E-98-15; E-98-16; E-98-17; E-98-18, Memorandum Opinion and Order, 15 FCC Rcd. 11166 (released June 21, 2000) (“TSR Wireless”).

²⁴ Texcom at ¶4.

existing Commission's rules to assess transit charges to the ILEC when it transports and delivers an intraMTA CMRS originated call to the ILEC network.

VI. Conclusion

Alltel has invested millions of dollars into its local exchange networks. Alltel recovers that investment from the various parties who benefit from the use of its networks in accordance with federal and state laws, regulations and tariffs. However, many carriers are attempting to manipulate the ESP Exemption in order to avoid their legal obligation in conjunction with their use of local exchange networks.

The traffic that is the subject of these comments uses traditional phone equipment to originate and terminate calls on the PSTN, does not undergo a net protocol conversion and does not provide enhanced functionality to the customer. The customer making or receiving the call cannot determine and is ambivalent as to whether a portion of the call is transported over an IP network or any other technology. In the AT&T Order, the Commission held that services meeting these criteria are subject to access compensation even when multiple carriers are involved in providing such transport.

Therefore, in response to the petitions the Commission should affirm that all wholesale providers of interexchange services are subject to access compensation obligations regardless of the technology used to provide the service.

²⁵ TSR Wireless at ¶31.

Any other result is unjust, contrary to Commission rules, precedent and applicable tariffs and grants less scrupulous companies an unfair competitive advantage under the guise of technology for which no party receives benefit. In fact, if the Commission does not affirm the access charge regime in these petitions, further abuse of the local exchange networks will occur and ultimately the consumer will suffer the consequences.

Respectfully submitted,

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